

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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Rockville, Maryland 20850
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**Case No. CBA-2172-A
(CBA-2172, CBA-3049, S-461)**

**PETITION OF LOYAL ORDER OF MOOSE ROCKVILLE LODGE NO. 1540
(by George Davis, Administrator)**

OPINION OF THE BOARD

(Hearing held November 7, 2001)

(Effective Date of Opinion: January 17, 2002)

Case No. CBA-2172-A is an Application by the Loyal Order of Moose Rockville Lodge No. 1540 for a modification to a special exception for a private club. The Board of Appeals granted the original special exception in an opinion dated May 29, 1967, and granted a modification to allow an outdoor covered pavilion by opinion dated March 4, 1988.

Pursuant to Section 59-A-4.3 and 59-G-1.3(c)(2) of the Montgomery County Zoning Ordinance, on November 7, 2001, the Board of Appeals held a public hearing on the modification request. Lawrence D. Bowles and George Davis appeared on behalf of Rockville Moose Lodge 1540. Leslie Mitchell, a neighboring property owner also appeared.

Decision of the Board: Requested modification **granted**, subject
to conditions enumerated below.

EVIDENCE PRESENTED

1. The subject property is Parcel A, located at 13755 Travilah Road, Rockville, Maryland, in the RE-2 Zone. The five-acre site is set back 244 feet from Travilah Road and is developed with a one-story building, a parking lot, an outdoor picnic pavilion and children's play equipment. There are many healthy and mature trees along the eastern, southern and western lot lines. [Exhibit 4(b)].

2. The properties north of the site and across Travilah Road are zoned RE-2 and developed with low-density residential uses. South of the site the property is zoned RE-2 and is undeveloped. Properties east and west of the site are zoned RE-2 and are

developed with special exception uses which include: S-1745 (a home occupation approved 4/90); S-589 (a landscape contractor approved 11/17/77), S-791 (a lawn service landscape contractor 7/14/88), S-867 (a landscape contractor approved 4/14/83) and S-1679 (a landscape contractor approved 5/10/89)/

2. On May 15, 2001 Rockville Lodge No. 1540 received a Notice of Violation which cites several conditions on the property not consistent with the special exception record. [Exhibit No. 20, Enclosure 2].

3. On June 12, 2001, Lodge No. 1540 filed this modification request for approval of the following existing conditions at the special exception site:

- a. Extended concrete parking surface and extended gravel areas.
- b. Six exterior lights mounted on the building walls.
- c. Four pole lights.

4. Mr. Bowles testified that the concrete parking area was increased by 5110 square feet in 1976 to provide additional parking spaces, which now total about 55 spaces. Mr. Bowles testified that the spaces were previously marked, but require re-marking, which could be accomplished within three months of Board approval, weather permitting. The extended concrete area is set back at least 40 feet from the property line. [Exhibit No. 23, Transcript, November 7, 2002, p. 10-12, 20].

5. Mr. Bowles testified that the extended gravel areas on the property have also existed since 1976. The gravel area at the western side of the property is part of the right of way that leads to the property (Lot N 800) located south of the subject site. The gravel area on the north side of the property provides a surface for trash collection and delivery vehicles. The extended gravel area at the south of the property accommodates occasional overflow parking and parking of oversized vehicles. These gravel areas are set back at least 20 feet from the property line. Mr. Bowles clarified that contrary to a statement in the MNCPPC staff report, the Moose Lodge is not requesting to pave any of the existing gravel areas. [Exhibit Nos. 20, 22, and Transcript, November 7, 2001, p.12-14, 21].

6. Mr. Bowles testified that there are six lights mounted on the sides of the lodge building, two each on the south, east and west sides. These are 500 watt halogen fixtures, 9 1/2 to 10 1/2 feet high, angle mounted at 45 degrees to illuminate an area 80' x 70'. [Exhibit Nos. 20 (2.b), 22, Transcript, November 7, 2001, p.9-10].

7. Mr. Bowles testified that there are two dusk to dawn pole lights on the north boundary of the property which are owned and maintained by PEPCO, and for which the Moose Lodge pays the electricity. They are 400 watt mercury vapor fixtures, 25-30 feet high. [Exhibit Nos. 20 (2.d), 22, 26(b) and Transcript, November 7, 2001, p. 6, p.

24,]. In addition, there are two pole lights located to the south of the lodge building which are 175 watt mercury vapor fixtures. These two lights do illuminate part of the lot to the south (Lot N 800), where there is a hauling business during the day. The owner of Lot N 800 does not object to the lights. [Exhibit Nos. 20 (2.c), 22, 26(a) and Transcript, November 7, 2001, p. 8].

8. Leslie Mitchell, who lives 11300 Royal Manor Way, (Lot 15, Block B) testified that in the wintertime, he can see the PEPCO pole lights from his home. He stated that he "can live with it the way it is." [Transcript, November 7, 2001, p. 24].

9. Maryland National Capital Park and Planning Commission (MNCPPC) Technical staff recommend approval of the requested modification, with conditions. [Exhibit No. 19].

FINDINGS OF THE BOARD

Sec. 59-G-1.2. Conditions for granting a special exception.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The inherent adverse effects associated with this use are the noise and traffic associated with it. The requested modification for approval of existing lighting and gravel areas will not increase these effects. The Board concurs with MNCPPC technical staff's finding that there are no non-inherent adverse effects related to the modification sufficient to deny the modification.

59-G-1.21. General Conditions.

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

- (1) *Is a permissible special exception in the zone.*

A private club, and modification of the special exception for a private club, is allowed in the RE-2 Zone.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The proposed modification, as conditioned below, will comply with the standards and requirements for a private club under Section 59-G-2.24.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The subject property is covered by the Potomac Subregion Master Plan. The Master Plan supports the existing RE-2 zone for the property, and the special exception, and modification of it, are allowed in the zone.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*
- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*
- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The five-acre subject site is well set back from Travilah Road and is buffered from view on three sides by mature trees. The requested lighting, gravel areas and paved parking areas are additionally well set back from the property lines. Lighting will be shielded and directed downward. Thus, the Board finds that the special exception, as modified, will be in harmony with the surrounding low-density residential and special exception uses, will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties, and as conditioned below, will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The requested modifications, which are in fact conditions that have existed on the subject site for more than twenty years, will not increase the intensity or scope of special exception uses in the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The requested lighting serves to enhance security on the site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

The special exception continues to be served by adequate public facilities.

Section 59-G-2.24. Golf Courses and Country Clubs.

The Board may authorize a golf course, country club, private club or service organization including community buildings, upon a finding that the proposed use will not adversely affect surrounding residential and agricultural uses because of noise, traffic, number of people or type of physical activity; provided, that the following standards and requirements can be met:

- (a) *The provision of food, refreshments, and entertainment for club or organization members and their guests may be allowed in connection with such use, provided the availability of such services is not reasonably expected to draw an excessive amount of traffic through local and residential streets.*

The provision of food, refreshments and entertainment is allowed under the original approval of the special exception. The requested modification will not affect the amount of traffic to the site and will thus not affect that approval.

- (b) *All buildings shall conform to the height, coverage and setback regulations of the zone in which they are located; and all facilities shall be so located as to conform to other special exception standards.*

The Board adopts the finding of MNCPPC staff that the requested modification conforms to the regulations of the RE-2 Zone as follows: The RE-2 height limit is 50 feet; the existing building is one story in height. Lot coverage in the RE-2 Zone is 25%; lot coverage for the use will be approximately 3.8%. In the RE-2 Zone, the front yard setback is 50 feet, the Board of Appeals granted a variance of 35 feet in Case No. A-265, dated May 12, 1976.

- (c) *All outdoor lighting shall be located, shielded, landscaped or otherwise buffered so that no direct light shall constitute an intrusion into any residential area.*

Condition number 5 of the Board's May 29, 1967 opinion granting the special exception provides:

The parking lot shall be lighted with the low mushroom type lights, with standards not to exceed seven (7) feet in height. The lights shall be so regulated to go off at midnight when the premises are vacated.

The Board finds that it can approve the lighting currently on the site, subject to a condition, as detailed below. As noted by MNCPPC technical staff, under current lighting standards, outdoor lights are typically approved with heights of 10 1/2 feet or greater. With respect to the lights owned by PEPCO, the Board notes that the height of the lights is not within the special exception holder's control. In addition the Board finds that the building lights are needed for security purposes, and are well buffered from view by setbacks and surrounding vegetation.

Accordingly, the requested modification is **granted** subject to the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record and the testimony of its witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the modification.
2. All terms and conditions of the original special exception, together with any modifications approved by the Board of Appeals, remain in full force and effect.
3. Petitioner will re-mark the paved parking spaces within three months of this Opinion, weather permitting.
4. All lighting will be situated and directed so that there is no illumination off site.
5. All parking areas will conform to the setback requirements of Section 59-E-2.81 of the Zoning Ordinance.
6. There will be no parking in the gravel area located outside the kitchen.
7. Petitioner will obtain all necessary permits.

On a motion by Allision I. Fultz, seconded by Angelo M. Caputo, with Louise L. Mayer, Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 11th day of January, 2002.

Katherine Freeman
Executive Secretary to the Board

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

